

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

BASF CATALYSTS LLC,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

Defendants.

**Civil Action No. 05-11241-JLT**

*(Electronic filing)*

## **JOINT MOTION TO STAY LITIGATION**

Plaintiff BASF Catalysts LLC (“BASF” or “Plaintiff”) and Defendants the United States of America, et al. (“United States” or “Defendants”) hereby jointly move the Court for an order staying this case, to enable the parties to engage in settlement discussions free of the complication or burden of litigation deadlines. In support of the relief requested in this motion, the parties state the following:

1. This action involves claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, and the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-92k. Plaintiff seeks to recover from the United States all or some of the environmental cleanup costs that Plaintiff has allegedly incurred or will incur at its manufacturing facility located on State Route 152 (30 Taunton Street), Plainville, Massachusetts (the “Facility”). Plaintiff also seeks injunctive relief against the Defendants.

2. On May 2, 2007, the parties jointly filed a motion to stay this case in light of the issues that were before the Supreme Court in United States v. Atlantic Research Corp., No. 06-

562 (S. Ct.). Specifically, the parties requested that this Court stay proceedings and order the parties — within 45 days after the Supreme Court issues its mandate in Atlantic Research — to contact the Court to schedule a status conference in this case.

3. By electronic order dated May 3, 2007, the Court approved the parties' stay motion.

4. On June 11, 2007, the Supreme Court decided Atlantic Research. On that same date, this Court *sua sponte* ordered that the stay be lifted, and that by July 16, 2007, the United States file an Answer or motion which addresses Plaintiff's remaining claims.

5. The parties now wish to focus their efforts on settlement, without the complication or burden of litigation deadlines. Accordingly, the parties have conferred and agreed that they need a limited period of time — 120 days — to seriously explore the possibility of a settlement in this case which would eliminate the need engage in further active litigation.

6. The parties thus propose the following case management schedule for the Court's approval:

- a. Temporary Stay of Litigation. To allow the parties to focus their time and efforts on settlement of claims in this case — all filings or other litigation deadlines in this case are stayed for a 120-day period, beginning on July 16, 2007, and running through November 13, 2007.
- b. Settlement Efforts. The parties will in good faith explore the possibility of settlement of the claims in this case. The parties expect to exchange documents that will facilitate an understanding of the issues involved, including, but not limited to, documents pertaining to the costs that the Plaintiff has allegedly incurred at the Facility and for which it seeks recovery, and documents that demonstrate the extent of manufacturing activities undertaken by Plaintiff at the Facility pursuant to contracts with governmental and non-governmental entities.
- c. Further Proceedings. If an agreement-in-principle to settle this case is not achieved before the expiration of the stay period, the parties may seek to extend the stay by filing a joint motion setting forth the basis for the requested extension.

However, if an agreement-in-principle to settle is not achieved before the expiration of the stay period, and if an extension of the stay period is not granted, then the stay shall be lifted when the stay period expires, and within ten (10) days following that date, the parties shall file jointly to the extent possible (or separately to the extent they cannot agree) a proposed case management schedule, which shall set forth the deadlines for the remaining proceedings in this case, including, for example, the deadline for filing any amended complaint, the Defendants' answer or Rule 12 motion, fact and expert witness discovery, motions for summary judgment, pre-trial conference, and trial-ready dates.

For the foregoing reasons, the Court should approve this motion.

\* \* \*

SO ORDERED, this \_\_\_\_\_ day of July, 2007.

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The Honorable Joseph L. Tauro  
UNITED STATES DISTRICT JUDGE

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Respectfully submitted,

**FOR THE DEFENDANTS:**

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment & Natural Resources Division

Dated: July 5, 2007

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**FOR PLAINTIFF BASF CATALYSTS LLC:**

Dated: July 5, 2007

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